IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BORIS TEITELMAN,   :
                                              :
   v.   :   CIVIL ACTION NO.
                                              :   99-4454
HAROLD S. WOODEN, JR., INC., <u>et. al</u>.   :

<u>MEMORANDUM AND ORDER</u>

HUTTON, J.   October   , 2000

Presently before the Court are Plaintiff's Motion to Extend Expert Disclosure Schedule (Docket No. 19), and Defendants' Brief in Opposition (Docket No. 23).

I. <u>BACKGROUND</u>

In accordance with Federal Rule of Civil Procedure 16(b), a scheduling order was entered in this action on December 7, 1999. Pursuant to that scheduling order, all discovery was to be completed by October 2, 2000 with all expert disclosures taking place by September 5, 2000. Plaintiff submitted expert disclosures on September 8, 2000 and Defendants indicated their intent to object to the use of that testimony due to the untimeliness of the disclosure. Plaintiff then filed this motion for an extension of the expert disclosure deadline to accommodate his untimely filing. No previous amendments to the scheduling order have been requested.

II. DISCUSSION

To assist in the more efficient administration of cases, the Court must issue a scheduling order limiting the time for discovery. See Fed. R. Civ. P. 16(a); see also Welton v. Consol. Rail Corp., No. CIV.A.92-1679, 1993 WL 4176, at *1 (E.D.Pa. Jan. 4, 1993). Rule 16(b) of the Federal Rules of Civil Procedure gives the Court the power to modify the scheduling order "upon a showing of good cause." Fed. R. Civ. P. 16(b). To establish "good cause" in this context, the party seeking an extension should show that a more diligent pursuit of discovery was impossible. See McElyea v. Navistar Int'l Transp. Corp., 788 F. Supp. 1366, 1371 (E.D.Pa. 1991), aff'd without opinion, 950 F.2d 723 (3d Cir. 1991). We must examine Plaintiff's allegations to determine if he has met this burden.

Plaintiff's attorney alleges that his need for this expert became clear late in the discovery process and that circumstances beyond his control, including a medical emergency, led to the three day delay in providing expert disclosures. According to the Plaintiff's attorney, preparation of a summary judgement motion in August led to the conclusion that an expert would be helpful to the trier of fact. After some delay due to expert availability, the Plaintiff's attorney found an expert and was scheduled to file the disclosures on time until he was called away for a family medical situation. Plaintiff's attorney returned from tending to his

family crisis in the evening on September 5, 2000 and filed his expert disclosures three days later.

The Court is satisfied that the Plaintiff has met the requirements of good cause. While Plaintiff's decision to use expert testimony came late in the discovery process, it does not appear and Defendant does not allege that this was a bad faith attempt to hamper Defendants' pre-trial preparation. Having made his decision to call an expert in August, it appears that Plaintiff's attorney pursued obtaining the necessary information diligently and was delayed by factors outside of his control. The delay was minimal (only three days) and should not disrupt the efficient trial of this case. In addition, the delay produced only slight prejudice to the Defendant which can easily be cured by granting Defendants' a brief period of time to obtain their own rebuttal expert witness. For the foregoing reasons, Plaintiff's motion is granted.

An appropriate Order follows.

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O R D E R

AND NOW, this _____ day of October, 2000, upon consideration of Plaintiff's Motion to Extend Expert Disclosure Schedule (Docket No. 19), and Defendants' Brief in Opposition (Docket No. 23), IT IS HEREBY ORDERED that Plaintiff's Motion is **GRANTED**;

IT IS HEREBY FURTHER ORDERED that Defendants shall have ten (10) days from the date of this ORDER to disclose their rebuttal expert witness and serve an expert report.

BY THE COURT:

_____
HERBERT J. HUTTON, J.